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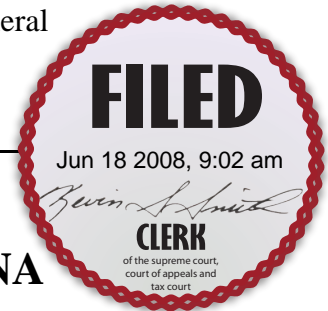
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**IN THE
COURT OF APPEALS OF INDIANA**



ALYONE J. PRIEST,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 45A03-0712-CR-585

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0503-FD-29

June 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Alyone J. Priest appeals his conviction for class D felony nonsupport of a dependent child. We dismiss.

Issue

The dispositive issue is whether Priest may challenge on direct appeal the adequacy of the factual basis underlying his guilty plea.

Facts and Procedural History

On November 21, 2001, the Lake County Superior Court ordered Priest to pay his ex-wife \$50 per week in child support. On March 24, 2005, the State charged Priest with one count of class D felony nonsupport of a dependent child,¹ alleging that he failed to pay support for his minor child between November 21, 2001, and March 23, 2004. When the charges were filed, Priest was \$8650.00 in arrears. On September 25, 2007, the trial court held a hearing, at which Priest pled guilty without a plea agreement. Priest's counsel questioned him in order to provide a factual basis for the guilty plea. The trial court followed up with additional questioning and then took the matter under advisement.

On October 23, 2007, following receipt of the pre-sentence investigation report, the trial court accepted Priest's guilty plea and sentenced him to two years, with eighteen months suspended to probation and the remaining six months to be served in Lake County Community Corrections. On November 26, 2007, Priest filed a notice of appeal.

¹ Ind. Code § 35-46-1-5.

Discussion and Decision

Priest challenges the adequacy of the factual basis for acceptance of his guilty plea. The State counters by asserting that Priest's challenge is not a proper subject for direct appeal. Because the law supports the State's contention, we do not reach the merits of Priest's argument.

A conviction based on a guilty plea may not be challenged on direct appeal. *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996). In *Tumulty*, our supreme court analogized a guilty plea to a civil settlement, emphasizing that both acts bring closure to a dispute and that permitting appeals from these "settlements" would make them more difficult to achieve in any litigation. *Id.* at 396. The *Tumulty* court further reasoned that because approximately ninety percent of criminal cases are disposed of by guilty plea, allowing a new remedy of direct appeal would have "the potential to multiply dramatically the caseload in the appellate courts by offering appeals to thousands of admitted felons." *Id.* Finally, the *Tumulty* court emphasized that Indiana Post-Conviction Rule 1 is the proper vehicle for pursuing claims regarding the factual assertions surrounding a defendant's decision to plead guilty:

"[T]he type and extent of evidentiary hearing afforded at a post-conviction proceeding is much broader than a hearing on a motion to correct errors and specifically designed to allow appellant an opportunity to establish the factual assertions he makes concerning his guilty plea."

Id. (quoting *Crain v. State*, 261 Ind. 272, 273, 301 N.E.2d 751, 751-52 (1973)). *See also Prowell v. State*, 687 N.E.2d 563, 564 n.1 (Ind. 1997) (specifying that if appellant's challenge involves the lack of a factual basis or another attack upon the conviction itself, the proper forum is a post-conviction proceeding).

In *Brightman v. State*, 758 N.E.2d 41 (Ind. 2001), our supreme court held that a defendant challenging the denial of his motion to withdraw his guilty plea prior to sentencing was not barred from raising the issue on direct appeal. The court specifically distinguished *Tumulty*, in which judgment had already been entered, upholding its general rule that, once judgment is entered, a defendant may not subsequently challenge his guilty plea on direct appeal. *Id.* at 395-96. The *Brightman* court reiterated that the correct avenue for lodging such post-judgment challenges to convictions is post-conviction relief. *Id.* at 396. However, because Brightman's challenge involved a pre-sentence motion to withdraw, he could challenge it on direct appeal.

Here, Priest's challenge involves a post-judgment attack on the factual basis underlying his guilty plea. Therefore, his case falls squarely under *Tumulty*, and the correct avenue is not direct appeal but post-conviction relief. As such, we must dismiss Priest's appeal.²

Dismissed.

BARNES, J., and BRADFORD, J., concur.

² Here, the evidentiary record before us is sufficient to allow a review on the merits. Therefore, although we are constrained to follow our supreme court's holding in *Tumulty*, we note that dismissing this appeal and requiring Priest to seek post-conviction relief runs counter to the *Tumulty* court's preference for judicial economy.